

LONDA & LONDA, ESQS.
277 North Broad Street
Elizabeth, New Jersey 07208

(908) 353-5600

Raymond S. Londa, Esq.
Felice T. Londa, Esq.

Fax (908) 353-5610

May 11, 2010

Clerk, United States District Court
Martin Luther King, Jr. Federal Building
& U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07101
By E-filing Only

Re: Michelle Williams vs. Elizabeth City and Police Officer
Rivera and Police Officer Dorilus
Civil Action # 08-5113 (DRD)
Motion to Dismiss Count V of the Amended Complaint
Pursuant to Fed.R.Civ.P. 12(b) (6)

Dear Sir/Madam:

Electronically filed herewith please find the following:

1. Defendant Officer Dorilus' Notice of Motion to Dismiss Count V of the Amended Complaint Pursuant to Fed.R.Civ.P. 12(b) (6)
2. Letter Memorandum in support thereof;
3. Proposed form of Order.

Please note that oral argument is requested if this motion is opposed.

Thank you for your attention.

Very truly yours,
LONDA & LONDA, ESQS.

/s/ *Raymond S. Londa*
Raymond S. Londa

Enclosures

cc Via electronic Filing and by Overnight Mail:

Honorable Dickenson R. Debevoise, USDJ

Fincourt B. Shelton, Esq.

Robert F. Varady, Esq.

Daniel Antonelli, Esq.

Courtesy Copy to William R. Holzapfel, Esq. by email only

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

LONDA & LONDA, ESQS.

277 North Broad Street
Elizabeth, New Jersey 07208
908-353-5600

Attorneys for Defendant Officer Dorilus

:

Michelle Williams

801 North Broad Street : CIVIL ACTION
Elizabeth, NJ

: NO. 08-5113 (DRD-MAS)

Plaintiff,

: NOTICE OF MOTION PURSUANT

vs.

: TO FED.R.CIV.P. 12(b) (6)
: RETURNABLE JUNE 7, 2010

Elizabeth City

One Police Plaza

Elizabeth, NJ 07201

:

and

Police Officer Rivera, and:

Police Officer Dorilus, :
Individually and in their

capacity as Elizabeth City :
Police Officers

:

Defendants.

:

To: Fincourt B. Shelton, Esq.

504 Main Street - Suite 100
Darby, Pennsylvania 19023

Robert F. Varady, Esq.
LaCorte, Bundy, Varady & Kinsella
989 Bonnel Court
Union, New Jersey 07083

Daniel Antonelli, Esq.
2004 Morris Avenue
Union, New Jersey 07083

SIRS:

PLEASE TAKE NOTICE that on June 7, 2010, at 9:00 A.M. in the forenoon or as soon thereafter as counsel may be heard, the undersigned, attorney for Defendant Police Officer Rodney Dorilus shall move before the United States District Court for the District of New Jersey, United States Courthouse and Post Office Building, 50 Walnut Street, Newark, New Jersey 07102 for an Order dismissing Count V of plaintiff's amended complaint with prejudice pursuant to Fed.R.Civ.P. 12(b) (6).

Please take further notice that in support of this Motion, the Defendant will rely upon the Letter Memorandum in support of motion filed herewith.

Oral argument is requested if this motion is opposed.

LONDA & LONDA, ESQS.
Attorneys for Defendant Officer Dorilus

By: /s/ Raymond S. Londa
Raymond S. Londa, Esq.

Dated: May 11, 2010

CERTIFICATION

I certify that on the date set forth below, the within Notice of Motion and Letter Memorandum in Support thereof and proposed form of Order are being filed electronically with the United States District Court Clerk, Newark vicinage, and that true copies of all moving papers are being served upon all counsel and upon the Honorable Dickinson R. Debevoise, U.S.D.J. by overnight mail from the United States Post Office, North Broad Street, Elizabeth, New Jersey 07208 in sealed envelope with proper postage attached and return address shown.

LONDA & LONDA, ESQS.
Attorneys for Defendant Officer Dorilus

By: Raymond S. Londa
Raymond S. Londa, Esq.

Dated: May 11, 2010

LONDA & LONDA, ESQS.
277 North Broad Street
Elizabeth, New Jersey 07208

(908) 353-5600

Raymond S. Londa, Esq.
Felice T. Londa, Esq.

Fax (908) 353-5610

May 11, 2010

Clerk, United States District Court
Martin Luther King, Jr. Federal Building
& U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07101
By E-filing Only

Re: Michelle Williams vs. Elizabeth City and Police Officer
Rivera and Police Officer Dorilus
Civil Action # 08-5113 (DRD)
Motion to Dismiss Count V of the Amended Complaint
Pursuant to Fed.R.Civ.P. 12(b) (6)

Dear Sir/Madam:

My firm represents Defendant Police Officer Rodney Dorilus in the above captioned matter. Please accept this letter memorandum in lieu of formal brief in support of the above referenced motion.

On April 21, 2010, plaintiff filed an amended complaint alleging a state law claim for malicious prosecution as set forth in Count V of the amended complaint.

Officer Dorilus is an employee of the City of Elizabeth Police Department and a defendant based upon allegations relating to the arrest of the plaintiff. As such, Officer Dorilus is

entitled to the protections of the New Jersey Tort Claims Act, ("TCA") N.J.S.A. 59:8-1 et seq. including but not limited to the obligation of claimants to file a Notice of Claim in compliance with the TCA and in particular N.J.S.A. 59:8-3 and -8 for any causes of action relating to state law claims.

On May 10, 2010, counsel for co-defendant Police Officer Johanna Rivera filed a motion to dismiss Count V of the plaintiff's amended complaint. That motion was filed by the Court as Document Number 45 in this case. The Rivera motion is based upon plaintiff's failure to state a claim upon which relief may be granted pursuant to Fed.R.Civ.P. 12(b)(6) for plaintiff's failure to file an appropriate Notice of Claim as required by the TCA, N.J.S.A. 59:8-4. Further, as argued in the Rivera motion, Count V of the amended complaint should be dismissed for plaintiff's failure to complete the supplemental claim form required by the City of Elizabeth before any complaint based upon state law claims can be filed, as authorized by the TCA, N.J.S.A. 59:8-6.

The Statement of Facts and Legal Arguments set forth in the Brief and Certification filed in support of the Rivera motion are fully applicable to this motion on behalf of Officer Dorilus, and shall not be repeated herein. Instead, we hereby rely upon same in full as support for this motion on behalf of Officer Dorilus.

Plaintiff's correspondence dated August 13, 2008, attached as Exhibit B to the Certification of Daniel Antonelli in support of

the Rivera motion fails to satisfy the statutory obligations of a Notice of Claim, and therefore Count V of the plaintiff's amended complaint should be dismissed. Further, plaintiff failed to complete the supplemental claim form required by the City of Elizabeth or provide any of the information required therein. Thus, for the reasons set forth in the Brief and Certification submitted in support of the motion filed on behalf of Officer Rivera, we ask the Court to dismiss Count V of the plaintiff's amended complaint with prejudice.

Respectfully Submitted,

LONDA & LONDA, ESQS.
Attorneys for Defendant Officer Dorilus

By: /s/Raymond S. Londa
Raymond S. Londa, Esq.

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

LONDA & LONDA, ESQS.
277 North Broad Street
Elizabeth, New Jersey 07208
908-353-5600

Attorneys for Defendant Officer Dorilus

:

Michelle Williams
801 North Broad Street : CIVIL ACTION
Elizabeth, NJ : NO. 08-5113 (DRD-MAS)
Plaintiff, : ORDER DISMISSING COUNT V
vs. : OF PLAINTIFF'S AMENDED COMPLAINT
Elizabeth City : PURSUANT TO FED.R.CIV.P. 12(b) (6)
One Police Plaza :
Elizabeth, NJ 07201

and

Police Officer Rivera, and:
Police Officer Dorilus, :
Individually and in their
capacity as Elizabeth City :
Police Officers :
Defendants. :
:

This matter having been opened to the Court by Raymond S. Londa, Esq., of the firm of Londa & Londa, Esqs., attorneys for Defendant Police Officer Rodney Dorilus, and the Court, having considered all papers submitted by the parties in connection with the Motion, and the arguments of counsel, and having made findings

of fact and conclusions of law as set forth on the record in Court
on the _____ day of _____, 2010; and for good cause shown;

IT IS on this _____ day of _____, 2010,

ORDERED that the Count V of Plaintiff's Amended Complaint
shall be and is hereby dismissed with prejudice; and it is further

ORDERED that a copy of this Order shall be served upon all
counsel within 7 days of the date of this Order.

USDJ

Opposed: _____

Unopposed: _____

